



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

John L. Mica
Ranking Republican Member

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

April 25, 2008

James W. Coon II, Republican Chief of Staff

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment

FROM: Subcommittee on Water Resources and Environment Staff

SUBJECT: Hearing on Proposals for a Water Resources Development Act of 2008

PURPOSE OF HEARING

On Wednesday, April 30, 2008, at 2:00 p.m., in Room 2167 Rayburn House Office Building, the Subcommittee on Water Resources will receive testimony from the Department of the Army (Civil Works), and representatives of industry, conservation organizations, and other stakeholders on issues and proposals for a Water Resources Development Act of 2008.

BACKGROUND

The Subcommittee on Water Resources and Environment has jurisdiction over the U.S. Army Corps of Engineers' Civil Works program -- the nation's largest water resources program. The Corps of Engineers ("Corps") constructs projects for the purposes of navigation, flood control, hurricane and storm damage reduction and shoreline protection, hydroelectric power, recreation, water supply, environmental infrastructure, environmental protection, restoration and enhancement, and fish and wildlife mitigation.

General Procedures:

The first step in a Corps water resources development project is a study of the feasibility of the project. If the Corps has done a study in the area before, the new study can be authorized by a resolution of either the Committee or the Senate Committee on Environment and Public Works. If the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. The majority of studies are authorized by Committee resolution.

The Corps first performs a reconnaissance study at Federal expense, at a cost not to exceed \$100,000. Reconnaissance studies determine whether there is a Federal interest in addressing a given

water resource problem or opportunity, identify the non-Federal interest that will participate in cost-sharing of the project, and typically take one year to complete. If a reconnaissance study indicates that there may be a viable Federal project and that a more detailed study should be undertaken, the Corps prepares a feasibility report, the cost of which is shared 50 percent by the Federal Government and 50 percent by the non-Federal interest.

After a feasibility study is completed, the results and recommendations of the study are submitted to Congress, usually in the form of a report of the Chief of Engineers. If such results and recommendations are favorable, the next step is authorization. Project authorizations are contained in water resources development acts which are traditionally enacted on a biennial schedule.

After a project is authorized, it would still require an appropriation of Federal funds to proceed to construction.

Continuing Authority Programs for Small Projects:

The Corps of Engineers also has certain authorities to construct small projects without specific authorization by the Congress. These authorities, collectively known as the "continuing authorities program," include (1) beach erosion control projects with a Federal cost of not more than \$3 million, (2) navigation projects with a Federal cost of not more than \$7 million, (3) flood control projects with a Federal cost of not more than \$7 million, (4) streambank and shoreline protection for public facilities projects with a Federal cost of not more than \$1.5 million, (5) projects to mitigate shoreline damages from Federal navigation projects with a Federal cost of not more than \$5 million, (6) projects of snagging and clearing for flood control with a Federal cost of not more than \$500,000, (7) projects modifying the structure and operation of existing projects for improvement to the environment with a Federal cost of not more than \$5 million, and (8) projects for the restoration and protection of aquatic ecosystems and estuaries (including dam removal) with a Federal cost of not more than \$5 million.

Since the continuing authorities program entails an abbreviated approval process, it offers an attractive alternative to specifically authorized work when project costs are relatively small. However, of recent, the Corps continuing authorities have been oversubscribed relative to annual appropriations, and have resulted in fewer projects being efficiently funded in any one year.

Cost Sharing:

The Water Resources Development Act of 1986, P.L. 99-662, as amended, contains the cost sharing provisions, which are generally applicable to Corps of Engineers water resources projects.

Harbor navigation projects:

For harbor navigation projects, non-Federal interests are required to pay 10 percent of project construction costs to depths 20 feet or less; 25 percent of project construction costs for depths greater than 20 feet but not more than 45 feet; and 50 percent of project construction costs for depths greater than 45 feet. Since 1996, project construction costs include costs associated with dredged material disposal facilities. In addition, the non-Federal interest must pay 10 percent of the

cost of general navigation features over a period not to exceed 30 years with interest as well as provide all lands, easements, rights of way, and relocations necessary for project construction and maintenance. The cost of the lands, easements, rights of way, and relocations is credited against the additional 10 percent repaid following construction.

Operation and maintenance costs are 100 percent Federal for work associated with depths not greater than 45 feet and 50 percent Federal for additional costs of maintaining depths greater than 45 feet. The Federal share of operation and maintenance is appropriated from the Harbor Maintenance Trust Fund. That fund was created in 1986 and consists of receipts from a 0.125 percent tax imposed on the value of cargo loaded or unloaded at U. S. ports. On March 31, 1998, the Supreme Court ruled that the tax on cargo that supports the Harbor Maintenance Trust Fund is unconstitutional insofar as it applies to exports. The tax on imports and domestic cargo continues to be collected. The balance in the Harbor Maintenance Trust Fund has been growing in recent years and totaled \$4.7 billion at the end of fiscal year 2007.

Inland waterways transportation projects:

The construction and major rehabilitation of inland waterways transportation projects is funded 50 percent from the Inland Waterways Trust Fund, with the balance from general revenues. This trust fund consists of revenues generated from a tax on inland waterways fuel. The tax rate for the trust fund has been 20 cents per gallon since January 1, 1995. Operation and maintenance of the inland waterways system are 100 percent Federal from general revenues.

The Inland Waterways Trust fund has become depleted over recent years and the administration has proposed phasing out the existing tax on waterways fuel and establishing a lock user fee.

Flood damage reduction projects:

For flood damage reduction projects (previously called flood control projects), structural alternatives require a minimum non-Federal share of 35 percent (25 percent for projects authorized before October 12, 1996) and a maximum of 50 percent. Non-structural projects require a fixed 35 percent non-Federal share. The non-Federal interest must pay at least 5 percent in cash of the costs of each project assigned to flood damage reduction during construction and provide lands, easements, rights of way, relocations and disposal areas necessary for flood damage deduction. Additional cash is required to be paid during construction if the local non-cash contribution of lands, easements, rights of way, relocations and disposal areas, and the mandatory 5 percent cash contribution do not equal 35 percent (or 25 percent, depending on the date of project authorization), but the non-Federal contribution is always limited to 50 percent of project costs assigned to flood damage reduction.

With the exception of the main-line levees within the Mississippi Rivers and Tributaries program, operation and maintenance of flood damage reduction projects are a non-Federal responsibility.

Hurricane and storm damage reduction and shoreline protection projects:

The cost of initial construction for hurricane and storm damage reduction and shoreline protection projects that protect public lands or privately owned lands with appropriate public access is cost-shared at 35 percent from non-Federal interests. The cost of construction on non-Federal public lands used for parks and recreation is cost shared at 50 percent, and on Federal lands, the cost is 100 percent Federal.

The costs of periodic nourishment of projects on privately owned lands ranges from 35 percent non-Federal costs for projects authorized on or before December 31, 1999 to 50 percent non-Federal costs for projects authorized after this date where the periodic nourishment is carried out after January 1, 2003.

Environmental restoration and protection projects:

For projects whose purpose is environmental (ecosystem) restoration and protection, the non-Federal share of construction is 35 percent of total project costs. Operation and maintenance of such projects is a non-Federal responsibility.

Water supply, recreation, and aquatic plant control:

For municipal and industrial water supply (drinking water), the non-Federal share of project costs is 100 percent, repaid over the life of the project, but not to exceed 30 years. For agricultural water supply (irrigation), the non-Federal share is 35 percent, repaid over time. For recreation features, the non-Federal share of the cost of construction is 50 percent of the separable costs allocable to recreation, and for recreational navigation 50 percent of joint and separable costs. Operation and maintenance of water supply and recreation projects are a non-Federal responsibility.

The Corps may also participate with other Federal and non-Federal agencies for aquatic plant control of major economic significance. The costs of site-specific aquatic plant control efforts are shared with non-Federal interests at 50 percent.

Environmental infrastructure:

Since 1992, the Corps of Engineers has been involved in the planning, design, and construction of environmental infrastructure projects for drinking water and wastewater. Environmental infrastructure projects constructed by the Corps are cost-shared with the non-Federal interest responsible for 25 percent of the total costs.

Credit:

During the development of prior Water Resources bills, the Committee received numerous requests for project-specific credit for individual projects. While requests for credit typically received favorable consideration, the Committee concluded that a general provision allowing credit under specified conditions would minimize the need for future project-specific provisions and, at the same time, assure consistency in considering future proposals for credit.

Section 2003 of the Water Resources Development Act of 2007 (Pub. L. 110-114) amended section 221 of the Flood Control Act of 1970 to statutorily authorize the Secretary of the Army to provide credit towards the non-Federal share of the cost of a project, including a project

implemented without specific authorization in law (i.e., continuing authorities program), the value of in-kind contributions made by the non-Federal interests that the Secretary determines are integral to the project. Examples of in-kind credit include the costs of planning, design, management, mitigation, construction and construction services, and the value of materials and services provided before or after the execution of partnership agreement with the non-Federal interest.

Section 2003 also required that eligible credit be limited to those materials or services outlined, in writing, within the partnership agreement with the non-Federal interest.

ADMINISTRATION PROPOSALS FOR A WATER RESOURCES BILL

From time to time, Presidential administrations have sent Congress legislative proposals for inclusion in a water resources bill. While the current administration has never sent Congress a comprehensive water resources proposal, on April 4, 2008, Secretary John Paul Woodley, the Assistant Secretary of the Army (Civil Works) transmitted a legislative proposal for modification of the funding source for the Inland Waterways Trust Fund. (*attached*)

This legislation would phase out the current source of funding for the Inland Waterways Trust Fund, which is a tax of 20 cents per gallon on diesel fuel, by fiscal year 2010, and in its place, implement a lock user fee. Under the administration's proposal, the new lock user fee would begin at the start of fiscal year 2009 and gradually increase until fiscal year 2012. Thereafter, the proposal would allow for an automatic adjustment (either upward or downward) based on the end-of-year balance of receipts in the Fund.

WATER RESOURCES DEVELOPMENT ACT OF 2008

On March 14, 2008, Chairman James L. Oberstar, Chairwoman of the Subcommittee on Water Resources and Environment, Eddie Bernice Johnson, Ranking Member John Mica, and Ranking Member of the Subcommittee on Water Resources and Environment, John Boozman, sent a "Dear Colleague" requesting proposed Corps project and study submissions for the formulation of a Water Resources Development Act of 2008.

The Committee places a high priority on developing and enactment of a Water Resources Development Act of 2008.



**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108**

APR 04 2008

Honorable Nancy Pelosi
Speaker of the House of Representatives
U.S. Capitol Building, Room H-232
Washington, D.C. 20515-0001

Dear Madam Speaker:

Enclosed is a legislative proposal to address the declining balance in the Inland Waterways Trust Fund (IWTF). The IWTF finances one-half of the Federal capital investment in the inland and intracoastal waterways of the United States. Congress established the IWTF in the Inland Waterways Revenue Act of 1978 and revised this authorization in section 1405(a) of the Water Resources Development Act of 1986.

This legislation is needed to cover the 50 percent share derived from the IWTF of the costs that the Army Corps of Engineers (Corps) incurs to construct, replace, expand, and rehabilitate the locks and dams and other features that make commercial transportation possible on these waterways.

This legislation also will promote better use of the Nation's overall economic resources. Through prices that are more closely aligned with the true costs of providing for waterborne commerce, it will encourage the use of efficient modes and routes to move the Nation's freight. This will lead over time to a more productive use of our national transportation system and thereby will improve national economic welfare.

The legislation would phase out the current source of funding for the IWTF, which is a tax of 20 cents per gallon on diesel fuel used in commercial transportation on inland and intracoastal waterways. The legislation would phase out this tax by FY 2010. In its place, the legislation would establish a lock user fee.

The prompt enactment of such legislation is needed. The balance in the IWTF has been declining since 2002, and the revenue from the diesel fuel tax is not sufficient to keep pace with the cost of the current or projected Federal capital investments in inland and intracoastal waterways projects.

Through the diesel fuel tax, the commercial users of the inland and intracoastal waterways now pay approximately \$90 million annually. By comparison, the amount appropriated from the IWTF, reflecting their share of the work, was \$205 million for fiscal year (FY) 2007 and \$216 million for FY 2008. The Corps estimates that the IWTF will be depleted around the end of the 2008 calendar year unless revenues are increased. Spending restraint alone will not address this problem. To ensure that both the Corps and the users are carrying out their respective responsibilities, measures must be undertaken before then to generate more revenue.

The legislation would begin the user fee at the start of FY 2009 and gradually increase the user fee until FY 2012. Thereafter, it provides for the automatic adjustment of the user fee (either downward or upward) based on the end-of-year balance of receipts in the IWTF, which will depend upon the level of Federal capital investment in these waterways. The automatic adjustment provision is a key feature of the proposal. It will tie the amount that the users pay more closely to future spending and will help inform future Federal authorizing and funding decisions.

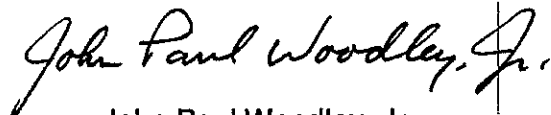
The President's Budget proposes to spend \$326 million for capital investment in the inland and intracoastal waterways for FY 2009, which is a reduction of \$134 million (29 percent) below the FY 2008 enacted level. This is a responsible level of spending for the coming fiscal year and reflects available revenues under the proposal. Furthermore, FY 2009 spending constraints are necessary, as the Administration has proposed, in order to introduce the new user fee in stages and thus lessen its impacts on current inland and intracoastal waterways users.

The annual receipts from the existing diesel fuel tax cover less than 10 percent of the total costs that the Corps incurs each year to support commercial navigation on the inland and intracoastal waterways, when taking into account the operation and maintenance costs paid by the general taxpayer.

This legislation would not alter current cost-sharing for these waterways. It is needed, however, to sustain and preserve current cost-sharing. It would do so by increasing the amount that the users pay to the extent needed to cover their 50 percent share of the capital costs under existing law. Although the users would be paying significantly more, they would only be paying about 20 percent of the total costs that the Corps incurs on their behalf. As a percent of the total costs, this is much less than our other non-Federal partners pay under the Corps flood and storm damage reduction, coastal navigation, aquatic ecosystem restoration, and hydropower programs.

The Army looks forward to working with Congress on this proposal. The Office of Management and Budget advises that there is no objection to the presentation of this proposal to the Congress and that its enactment would be in accord with the program of the President.

Very truly yours,



John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

Enclosures

AN ACT

To provide for a fee for the use of locks located on inland and intracoastal waterways of the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE. — This Act may be cited as the “Lock User Fee Act of 2008”.

SEC. 2. LOCK USER FEE. — (a) **IN GENERAL.** — There is hereby imposed on barges designed to carry commercial cargo a user fee for each passage through a lock located on the inland and intracoastal waterways of the United States. The applicable towboat operator shall be responsible for paying this lock user fee to the Secretary of the Army in accordance with the following criteria:

(1) If the main lock chamber at a site is equal to or greater than 600 feet in length, the lock user fee at that site shall be —

If the use occurs:

The lock user fee per barge is:

From October 1, 2008 – September 30, 2009	\$50.00
From October 1, 2009 – September 30, 2010	\$60.00
From October 1, 2010 – September 30, 2011	\$70.00
From October 1, 2011 – December 31, 2012	\$80.00
After December 31, 2012	As provided for in subsection (b).

(2) If the main lock chamber at a site is less than 600 feet in length, the lock user fee at that site shall be —

If the use occurs:

The lock user fee per barge is:

From October 1, 2008 – September 30, 2009	\$30.00
From October 1, 2009 – September 30, 2010	\$36.00
From October 1, 2010 – September 30, 2011	\$42.00
From October 1, 2011 – December 31, 2012	\$48.00
After December 31, 2012	As provided for in subsection (b).

(b) **AUTOMATIC ADJUSTMENT TO FEE.** —

(1) If the balance of receipts in the Inland Waterways Trust Fund at the end of

fiscal year 2012 or any subsequent fiscal year is less than \$25,000,000, or is less than \$50,000,000 and has declined from the level of such balance at the end of the preceding fiscal year, then the lock user fee shall increase for the following calendar year:

(A) by \$10.00 for sites where the main lock chamber is equal to or greater than 600 feet in length; and

(B) by \$6.00 for sites where the main lock chamber is less than 600 feet in length.

(2) If the balance of receipts in the Inland Waterways Trust Fund at the end of fiscal year 2012 or at the end of any fiscal year thereafter is greater than \$75,000,000 and has increased from the level of such balance at the end of the preceding fiscal year, then the lock user fee shall decrease for the following calendar year:

(A) by \$10.00 for sites where the main lock chamber is equal to or greater than 600 feet in length; and

(B) by \$6.00 for sites where the main lock chamber is less than 600 feet in length.

(3) For purposes of this subsection, the balance of receipts shall be the amount of collected lock user fees in the Inland Waterways Trust Fund that have not yet been made available for obligation or that will not become available for obligation until the following fiscal year or thereafter.

(c) DEPOSIT IN INLAND WATERWAYS TRUST FUND. — The Secretary of the Army shall deposit the amounts collected from the lock user fee imposed by this section in the Inland Waterways Trust Fund.

SEC. 3. EXEMPTION. — The lock user fee imposed by section 2 shall not be imposed on barges for transiting a lock when used by, or on behalf of:

(a) the Department of Defense in connection with the work of its military programs in support of the national defense;

(b) the Army Corps of Engineers civil works program or the Tennessee Valley Authority in connection with their work on the locks, dams, channels, and related structures that support commercial navigation; or

(c) the Coast Guard.

SEC. 4. REVISION TO INLAND WATERWAYS FUEL TAX. — Title 26 U.S.C. § 4042 is amended by —

(a) striking the table set forth in subsection (b)(2)(A) in its entirety and inserting the following in lieu thereof:

"If the use occurs:

The tax per gallon is:

From January 1, 1995 – September 30, 2008 20 cents

From October 1, 2008 – September 30, 2009 10 cents

From October 1, 2009 – September 30, 2010 5 cents

On or after October 1, 2010 0 cents."; and

(b) inserting the following language immediately after the phrase "Inland Waterways Revenue Act of 1978" in subsection (d)(2):

"as in effect prior to the enactment of the Lock User Fee Act of 2008".

SEC. 5. INLAND AND INTRACOASTAL WATERWAYS OF THE UNITED STATES. — (a) Section 206 of the Inland Waterways Revenue Act of 1978, as amended (33 U.S.C. §1804), is amended —

(1) by striking in its entirety all statutory language preceding the first colon and inserting the following in lieu thereof:

"The following waterways constitute the inland and intracoastal waterways of the United States"; and

(2) by adding at the end of that section the following:

"(28) Barataria Bay Waterway, Louisiana: From Gulf Intracoastal Waterway to Gulf of Mexico with side channel to Grand Isle, 41.3 miles.

(29) Barkley Canal, Cumberland and Tennessee Rivers, Kentucky: Canal connecting Barkley Reservoir and Kentucky Reservoir, 1.75 miles.

(30) Bayou LaFourche and LaFourche-Jump Waterway, Louisiana: From mile 3 above the mouth at the Gulf of Mexico to Lockport, Louisiana, 47 miles.

(31) Bayou Teche and Vermilion River, Louisiana: From Vermilion Bay 52 miles to General Mouton Avenue Bridge at Lafayette, Louisiana.

(32) Bayou Teche, Louisiana: From mouth to Arnaudville, Louisiana, 106.5 miles.

(33) Bayou Terrebonne, Louisiana: From Bush Canal 24.1 miles to Houma, Louisiana.

(34) Big Sandy River, Kentucky and West Virginia: From junction with Ohio River to mile 26.8.

(35) Black River, Wisconsin: From junction with Mississippi River to mile 1.4.

(36) Canaveral Barge Canal, Florida: The shallow draft barge channel from the deepwater turning basin 11.5 miles to the Intracoastal Waterway.

(37) Channel to Aransas Pass, Texas: From the junction with mile 534 of the Gulf Intracoastal Waterway for 7 miles to Aransas Pass.

(38) Channel to Victoria, Texas: From junction with Gulf Intracoastal Waterway to mile 35.8, Victoria, Texas, and the Tributary Channel to Seadrift, Texas, 2 miles.

(39) Chocolate Bayou, Texas: From junction with Gulf Intracoastal Waterway to mile 13.4.

(40) Clinch River, Tennessee: From junction at mile 567.7 with Tennessee River through mile 61.5 on the Clinch River.

(41) Colorado River and Flood Discharge Channels, Texas: From the junction with the Gulf Intracoastal Waterway to mile 15.6.

(42) Columbia River between Vancouver and The Dalles: Columbia River for 85 miles between Vancouver, Washington, and The Dalles, Oregon.

(43) Elk River Harbor, West Virginia: From the junction with the Kanawha River to mile 2.5.

(44) Escambia and Conecuh Rivers: From the mouth at Escambia Bay, Florida to mile 7.

(45) Freshwater Bayou, Louisiana: From the junction with the Gulf Intracoastal Waterway 23.1 miles to the Gulf of Mexico.

(46) Gulf County Canal, Florida: From entrance at Gulf of Mexico to Gulf Intracoastal Waterway.

(47) Gulf Intracoastal Waterway, Morgan City-Port Allen Route: From Morgan City, Louisiana to Port Allen, Louisiana, 64.1 miles.

(48) Hiwassee River, Tennessee: From junction with Tennessee River to mile 20.5.

(49) Inland Waterway from Franklin to the Mermentau River, Louisiana: From Bayou Teche at Franklin to Mermentau River with locks at Hanson Canal and in Schooner Bayou.

(50) Intracoastal Waterway, Caloosahatchee River to Anclote River, Florida: From mouth of Caloosahatchee River to Anclote River, 160 miles.

(51) Licking River, Kentucky: From the junction with mile 470 of the Ohio River to mile 8.

(52) Little Kanawha River, West Virginia: From the junction with the Ohio River to mile 14.5.

(53) Mermentau River, Bayous Nezpique and Des Cannes, Louisiana: Mermentau River from Gulf Intracoastal Waterway to mile 71.5; Bayou Nezpique from mouth to mile 25; Bayou Des Cannes from mouth to mile 8.5.

(54) Mermentau River, Louisiana: Lower Mermentau River from Gulf Intracoastal Waterway to Gulf of Mexico; Inland Waterway from Vermilion Bay to the Mermentau River; and waterway from White Lake to Pecan Island.

(55) Minnesota River, Minnesota: From the junction with the Mississippi River for 25.6 miles to Shakopee, Minnesota.

(56) Mouth of Yazoo River, Mississippi: From Mississippi River for 9.3 miles to junction of Old and Yazoo Rivers.

(57) Okeechobee Waterway, including St. Lucie Canal to Intracoastal Waterway: From junction with Intracoastal Waterway, Jacksonville to Miami, Florida, to Gulf of Mexico via Clewiston and

channel across Lake Okeechobee, 154.6 miles; south shore levee channel from Port Mayaca to Clewiston, 36.7 miles; natural channels along northerly shore of the lake from Port Mayaca to Moore Haven Lock, 57.3 miles; Taylor Creek to Town of Okeechobee, Florida, 4 miles.

(58) Old River, Louisiana: From junction with Mississippi River to junction with Red River at mile 7.

(59) Pamlico River, North Carolina: Mouth to Washington, North Carolina.

(60) Petit Anse, Tigre and Carlin Bayous, Louisiana: Bayou Petit Anse from Gulf Intracoastal Waterway to head of Avery Island, 6.1 miles; Bayou Carlin from mouth to Lake Peigneur, 7.6 miles; Avery (McIlhenny) Canal from Gulf Intracoastal Waterway to Vermillion Bay, 2.7 miles.

(61) San Bernard River, Texas: From the junction with the Gulf Intracoastal Waterway to mile 26.0.

(62) St. Croix River, Minnesota and Wisconsin: From the junction with the Mississippi River 24.5 miles to Stillwater, Minnesota.

(63) St. Marks River, Florida: Mouth to Newport, Florida.

(64) Tributary Arroyo Colorado, Texas: From the junction with the Gulf Intracoastal Waterway for 26 miles to Port Harlingen, Texas.

(65) Waterway from Intracoastal Waterway to Bayou Dulac, Louisiana (Bayous Le Carpe and Grand Caillou): From Gulf Intracoastal Waterway at Houma, Louisiana through Bayous Le Carpe, Pelton, and Grand Caillou to Bayou Dulac, 16.3 miles.

(66) Wolf River, Tennessee: From junction with Mississippi River to mile 3.

(67) Yazoo River, Mississippi: From Old River, Mississippi, 161 miles to mouth of Yalobusha River."

SEC. 6. REGULATIONS. — The Secretary of the Army may prescribe such regulations as may be necessary to carry out this Act, including the time, manner, and place of payment of the lock user fee imposed by section 2.

SEC. 7. CONFORMING AMENDMENT. — Title 26 U.S.C. § 9506 is amended in subsection (c)(1) by striking the phrase "this section" and inserting the following language in lieu thereof:

"the Lock User Fee Act of 2008".

SECTIONAL ANALYSIS

The purpose of this legislation is to replace the current funding source for the Inland Waterways Trust Fund (IWTF) with a user fee. The Congress established the IWTF in the Inland Waterways Revenue Act of 1978 and revised the authorization for the IWTF in section 1405(a) of the Water Resources Development Act of 1986. The new funding source would consist of a fee imposed on commercial barges for using a lock located on an inland or intracoastal waterway of the United States.

Section 1 provides that the proposed legislation may be cited as the "Lock User Fee Act of 2008".

Section 2 establishes the user fee and provides for its collection by the Secretary of the Army. The operator of the towboat is responsible for paying the user fee on a per barge basis, whether or not the barge contains cargo. The amount of the user fee varies depending on the length of the main lock chamber at each lock and dam site through which a barge passes, and the fiscal or calendar year when it passes through that lock.

Section 2(a)(1) applies to sites where the main lock chamber has a length of 600 feet or more. Section 2(a)(2) applies to sites where the main lock chamber is less than 600 feet in length. The per barge user fee paid at sites where the main lock chamber is less than 600 feet in length would be 60 percent of the fee at sites with the larger locks.

The user fee would be phased in, beginning October 1, 2008. The fee would be \$50.00 per barge lockage from October 1, 2008 through September 30, 2009 at sites to which section 2(a)(1) applies. The fee would increase \$10.00 for each of the following two one-year periods, and, then from October 1, 2011 through December 31, 2012, the fee would be \$80.00 per barge lockage. For sites covered under section 2(a)(2), the fee would be \$30.00 from October 1, 2008 through September 30, 2009. The fee would increase \$6.00 for each of the following two one-year periods, and, then from October 1, 2011 through December 31, 2012, the fee would be \$48.00 per barge lockage.

Section 2(b) authorizes automatic adjustments to the user fee beginning January 1, 2013. Adjustments will be made based on the balance of receipts in the IWTF at the end of the fiscal year and on whether this amount has been increasing or decreasing. The

automatic adjustment feature is designed to ensure that sufficient funding is available over time to finance the IWTF share of the capital costs of inland waterways projects. This subsection continues the two-tiered system of charges established in section 2(a), by providing for a smaller adjustment at sites where the main lock chamber is less than 600 feet in length.

Section 2(c) requires the Secretary of the Army to deposit the amounts collected from the lock user fee into the IWTF.

Section 3 provides for a limited governmental exemption from the requirement to pay the user fee. The exemption would apply only to the movement through a lock of a barge that is being used by, or on behalf of, the Department of Defense, the Army Corps of Engineers, or the Tennessee Valley Authority for certain purposes, or of a barge that is being used by, or on behalf of, the Coast Guard.

Section 4(a) provides for the incremental phasing out of the IWTF financing rate component of the existing diesel fuel tax on the inland and intracoastal waterways, which is the portion that now funds the IWTF. The IWTF financing rate component would remain at its current level of 20 cents per gallon through September 30, 2008. It would decline to 10 cents per gallon for Fiscal Year 2009 and 5 cents per gallon for Fiscal Year 2010, after which time the IWTF financing rate component of the tax would be zero. Section 4(b) clarifies that commercial transportation on the inland and intracoastal waterways listed in section 5(a)(2) would continue to not be subject to the diesel fuel tax.

Section 5 modifies section 206 of the Inland Waterways Revenue Act of 1978, as amended, to provide a comprehensive list of the inland and intracoastal waterways of the United States. The provisions of the Lock User Fee Act of 2008 regarding the new user fee would apply to all locks on the inland and intracoastal waterways of the United States, including the waterways listed in section 5(a)(2).

Section 6 authorizes the Secretary of the Army to issue regulations to carry out the Lock User Fee Act of 2008. The legislation includes the time, manner, and place of payment as an example of a subject that would be within the scope of the Secretary's regulatory authority.

Section 7 modifies 26 U.S.C. 9506(c)(1) to clarify that the amounts in the IWTF may be made available to finance one-half of the capital costs on all inland and intracoastal waterways, including those listed in section 5.